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1 “approximately 744 square feet of interior floor area, identified as Suite 1,... The
2 Premises are a portion of a building (herein referred to as the ‘Building’) commonly
3 known as ‘Building A’ and which is located at 15612 Best Road, Mount Vernon, WA
4 98273....” (“Premises”).

5 1.2 Defendant Knutzen Farms, L.P. is a Washington limited partnership that,
6 based upon knowledge and belief, grows, harvests, and sells potatoes in and around
7 Skagit County, Washington (“Knutzen”).

8 1.3 Defendant Industrial Ventilation, Inc., is an Idaho corporation registered
9 and licensed to do business in the state of Washington (“Industrial”).

10 1.4 This matter concerns damage to and destruction of Stirling’s marijuana
11 plants and product that was being grown and processed at the Premises. Venue is
12 proper pursuant to RCW 4.12.020(3), as the subject plants and product were
13 damaged while in the Premises and thereby located in Skagit County, Washington.
14 Venue is separately appropriate based upon the fact that the principal place of
15 business for Knutzen is Skagit County, Washington, and both Defendants transacted
16 business in Skagit County, Washington. RCW 4.12.025(3). This Court has
17 jurisdiction over the Defendants, as Washington is Knutzen’s principal place of
18 business, Industrial transacts business in the state of Washington, and both
19 committed a tortious act in the state of Washington. RCW 4.28.185.

21 II. FACTS

22 2.1 Stirling restates and incorporates by reference the allegations contained
23 in paragraphs 1.1 through 1.4 herein.
24

1 2.2 Stirling has secured the right to grow, process, and sell marijuana
2 pursuant to Marijuana Producer Tier 2 License No. 416060 ("License") issued by the
3 Washington State Liquor and Cannabis Board ("LCB"). The License is attached to
4 and associated with the Property, which is leased by James Easterlin, d.b.a. Stirling
5 Horticulture, pursuant to the May 2016 Building Lease with John and Toni
6 Christianson, a true and correct copy of which is attached hereto and incorporated by
7 reference as Exhibit B.

8 2.3 In or about 2017, Stirling began to locate seeds and mother plants on
9 the Premises to commence production under the License. Based upon knowledge
10 and belief, in 2018, Knutzen located harvested potatoes for storage in a separate
11 building on the Property and adjacent to the Premises.

12 2.4 Based upon knowledge and belief, Knutzen retained Industrial to
13 fumigate the potatoes being stored on the Property. Industrial conducted such work
14 on or about November 3, 2018, December 7, 2018, and December 8, 2018.

15 2.5 Based upon knowledge and belief, herbicides were applied for the
16 purpose of controlling sprouts on the potatoes. The materials were applied in an
17 aerosol state and included IVI CIPC Aerosol, which was applied during the November
18 3, 2018, and December 8, 2018 applications. The active ingredient in IVI CIPC is
19 Chlorpropham. In addition, 1,4ZAP® was applied on December 7, 2018. Under the
20 label for this product, the active ingredient is also Chlorpropham.
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22 2.6 The storage area where the potatoes were located shared a common
23 wall with an organic certified food cooperative called the Food Hub. The Food Hub's
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1 space is at the end of the building and directly across a parking area from the
2 Premises.

3 2.7 On or about December 10, 2018, the Food Hub experienced significant
4 infiltration of the herbicides applied to the Knutzen potatoes through the common wall.
5 The Food Hub immediately opened all of the doors and windows in the space and ran
6 fans to remove the chemicals.

7 2.8 On April 3, 2019, the LCB conducted an inspection of Stirling's facility
8 and took three samples from the grow rooms and one from the drying room for testing.
9 The test results all identified the presence of Chlorpropham in amounts exceeding the
10 state action levels. Based upon these test results, the LCB took possession and
11 destroyed all of Stirling's plants, seeds, and product located at the Premises. The
12 destroyed product included 49.5 kg of dried product, of which 70 percent was grade A
13 bud, and 30 percent was grade B bud; 965 plants at 680.385 grams of bud per plant,
14 of which 70 percent was grade A bud, and 30 percent was grade B bud; and plant
15 byproduct for the 965 plants .35 per gram.
16

17 2.9 Based upon knowledge and belief, Stirling's products were contaminated
18 by the herbicides applied to Knutzen's potatoes when they were ventilated out of the
19 Food Hub and then penetrated the Premises. Such caused Stirling's plants and
20 products to have Chlorpropham at amounts exceeding state levels, and
21 correspondingly caused the LCB to take and destroy all of Stirling's product and
22 plants.
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1 2.10 Release of the herbicides was caused by the failure of Defendants to
2 adequately seal the Knutzen storage room. Based on knowledge and belief, the
3 storage room should have been completely sealed off and self-contained to prevent
4 the herbicides from being released into the environment. Defendants knew or should
5 have reasonably known that the herbicides should not have been released into the
6 environment, and that such release could cause damages to other agricultural plants.

7 2.11 At all material times, Knutzen participated, authorized, and/or directed
8 the actions of Industrial, or caused, knew, or sanctioned the actions of Industrial.

9 III. FIRST CAUSE OF ACTION - TRESPASS

10 3.1 Stirling restates and incorporates by reference paragraphs 1.1 through
11 2.11 herein.

12 3.2 Under Bradley v. American Smelting and Refining Co., 104 Wn.2d 677,
13 709 P.2d 782 (1985), to recover under a trespass theory based on the deposit of
14 airborne particulates into Stirling's Premises and onto its plants and products:

15 a plaintiff must show: 1) an invasion affecting an interest in the
16 exclusive possession of his property; 2) an intentional doing of the act
17 which results in the invasion; 3) reasonable foreseeability that the act
18 done could result in an invasion of plaintiff's possessory interest; and
 (4) substantial damages to the res.

19 Id. at 691. The intent element requires "a volitional act undertaken with the knowledge
20 and substantial certainty that reasonably to be expected consequences would follow."

21 Id. at 683.

22 3.3 Defendants, and/or persons for whom Defendants are vicariously liable,
23 have unlawfully invaded Stirling's interest in its exclusive possession of the Premises
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1 by depositing herbicides into Stirling's Premises and onto its plants and products, all
 2 without permission, authority, or right. Such acts were intentional and undertaken with
 3 the knowledge and substantial certainty that the chemicals would escape the storage
 4 space and drift into the Premises, and with a reasonable foreseeability that such acts
 5 would disturb Stirling's possessory interests. Such acts have caused substantial
 6 damage to and continue to infect the Premises, marijuana plants and product, the
 7 effects of which are ongoing and continuing in nature. Stirling has suffered, and will
 8 continue to suffer, damages from such trespass in an amount to be determined by the
 9 trier of fact herein.

10 3.4 Defendants' actions and trespasses have caused, and will continue to
 11 cause, Stirling to suffer actual and substantial harm, and damages in an amount to be
 12 determined by the trier of fact herein.

14 IV. SECOND CAUSE OF ACTION – NUISANCE

15 4.1 Stirling restates and incorporates by reference paragraphs 1.1 through
 16 3.4 herein.

17 4.2 Defendants, and/or persons for whom Defendants are vicariously liable,
 18 intentionally applied herbicides to the potatoes located in the storage area in such a
 19 manner that caused the herbicides to invade the Premises. Such acts have
 20 unreasonably interfered with Stirling's use and enjoyment of the Premises and
 21 constitute a nuisance under RCW 7.48.010 and Riblet v. Ideal Cement Co., 57 Wn.2d
 22 619, 358 P.2d 975 (1961). Defendants' application of herbicides in a manner that
 23 caused it to drift into the Premises was unreasonable. Such acts have damaged
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1 Stirling's marijuana plants and product, and substantially interfered with Stirling's use
2 and enjoyment of the Premises and the injured plants, and Stirling's ability to farm
3 product in the Premises.

4 4.3 Defendants' actions and nuisances have caused, and will continue to
5 cause, Stirling to suffer actual and substantial harm and damages in an amount to be
6 determined by the trier of fact herein.

7 V. THIRD CAUSE OF ACTION – TIMBER TRESPASS
8 UNDER RCW 64.12.030

9 5.1 Stirling restates and incorporates by reference paragraphs 1.1 through
10 4.3 herein.

11 5.2 Defendants, and/or persons for whom Defendants are vicariously liable,
12 have injured trees, timber, and/or shrubs on the Premises without lawful authority.
13 Such actions by Defendants were "willful" and were not casual or involuntary.

14 5.3 Stirling is entitled to recover all damages caused by Defendants, and/or
15 persons for whom Defendant are vicariously liable, for timber trespass under RCW
16 64.12.030, in an amount to be determined by the trier of fact herein, and further
17 entitled to have all such damages trebled based upon the willful acts of Defendants, all
18 which were not casual or involuntary.

19 VI. FOURTH CAUSE OF ACTION – STRICT LIABILITY
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21 6.1 Stirling restates and incorporates by reference paragraphs 1.1 through
22 5.3 herein.

23 6.2 Defendants' application of herbicides is an abnormally dangerous activity
24 subject to strict liability under Langan v. Valicopters, Inc., 88 Wn.2d 855, 567 P.2d 218

1 (1977). In determining whether an act is “abnormally dangerous” for purposes of strict
2 liability, the following factors are considered:

3 (a) Whether the activity involves a high degree of risk of some harm to
4 the person, land or chattels of others;

5 (b) Whether the gravity of the harm which may result from it is likely to
6 be great;

7 (c) Whether the risk cannot be eliminated by the exercise of
8 reasonable care;

9 (d) Whether the activity is not a matter of common usage;

10 (e) Whether the activity is inappropriate to the place where it is carried
11 on; and

12 (f) The value of the activity to the community.

13 Id. at 861.

14 6.3 Defendants’ application of herbicides to the unsealed storage room
15 adjacent to the Premises and other agricultural activities involves a high degree of risk
16 of injury to, inter alia, Stirling, and its marijuana plants and product located in the
17 Premises. The gravity of harm which would result from the drift of herbicides into
18 Stirling’s Premises is likely to be great, as the chemicals applied by Defendants were
19 toxic to marijuana plants and product. The risk of drift or contamination of Stirling’s
20 marijuana plants and product cannot be eliminated by the exercise of reasonable care.
21 The application of the herbicides in the manner and of the type used by Defendants is
22 not a matter of common usage in the community. The application of herbicides toxic
23 to agricultural products, including marijuana plants and products, is inappropriate in a
24 storage facility that is not completely sealed. The social value of applying herbicides

1 to control sprouts to a private inventory of potatoes is outweighed by the risk of harm
2 to other agricultural products, including Stirling's marijuana plants and products.
3 Defendants are strictly liable for damages proximately caused by the applications of
4 herbicides.

5 6.4 Defendants' applications of herbicides was the proximate cause of
6 damage to Stirling, including, but not limited to, injury to Stirling's marijuana plants and
7 product.

8 6.5 Defendants' actions have caused, and will continue to cause, Stirling to
9 suffer actual and substantial harm and damages in an amount to be determined by the
10 trier of fact herein.

11 VII. FIFTH CAUSE OF ACTION – NEGLIGENCE

12 7.1 Stirling restates and incorporates by reference paragraphs 1.1 through
13 6.5 herein.

14 7.2 7 U.S.C. § 136j(2)(G) of the Federal Insecticide and Environmental
15 Pesticide Control Act declares that it is unlawful "to use any registered pesticide in a
16 manner inconsistent with its labeling."

17 7.3 RCW 15.58.150(2)(c) of the Washington Pesticide Control Act provides
18 that: "It shall be unlawful:...[f]or any person to use or cause to be used any pesticide
19 contrary to label directions or to regulations of the director if those regulations differ
20 from or further restrict the label directions...."

21 7.4 RCW 17.21.150(4) declares that it is a violation of the Washington
22 Pesticide Application Act to "[o]perate[] in a faulty, careless, or negligent manner."
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1 7.5 WAC 16-228-1220(5) provides that: "No person shall apply pesticides if
2 weather conditions are such that physical drift or volatilization may cause damage to
3 adjacent land, humans, desirable plants or animals."

4 7.6 WAC 16-228-1220(2) provides that: "No person shall transport, handle,
5 store, load, apply, or dispose of any pesticide, pesticide container or apparatus in such
6 a manner as to pollute water supplies or waterways, or cause damage or injury to
7 land, humans, desirable plants and animals, or wildlife."

8 7.7 At all material times hereto, Defendants owed Stirling a duty to use
9 reasonable and ordinary care in applying herbicides on the potatoes, including, but not
10 limited to, those duties imposed by statutes and regulations, and also in a manner to
11 avoid injury to Stirling's marijuana plants and products. Defendants breached this
12 duty by, inter alia, applying pesticides against labeling instructions and in weather
13 conditions conducive to drift, and/or in a manner that resulted in drift into Stirling's
14 Premises, and by failing to comply with applicable laws and regulations. Defendants'
15 breaches were the proximate cause of damage to Stirling's property. Such actions
16 and inactions by Defendant constitute negligence.

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18 7.8 Chlorpropham, which is toxic or prohibited to marijuana plants and
19 products, would not ordinarily be found in marijuana plant tissue in the absence of
20 negligence. At all material times hereto, herbicides containing Chlorpropham were
21 applied by Defendants to a storage area within the exclusive control of Defendants. In
22 no way did Stirling contribute to the occurrence of Chlorpropham on the marijuana
23 plants or products. Such actions and/or inactions by Defendants entitle Stirling to an
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1 inference of negligence under the doctrine of res ipsa loquitur and constitute
2 negligence.

3 7.9 Defendants' negligence has caused Stirling to suffer actual and
4 substantial harm and damages in an amount to be determined by the trier of fact
5 herein.

6 WHEREFORE, having stated claims for relief, Stirling prays as follows:

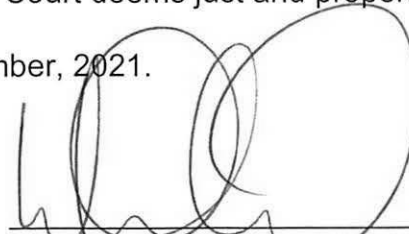
7 1. for judgment against Defendants, jointly and severally, in the amount of
8 all damages found by the trier of fact herein;

9 2. for judgment trebling all damages found by the trier of fact herein;

10 3. for an award of Stirling's attorneys' fees and costs against Defendants
11 as allowed by statute, contract, law, or equity; and

12 4. for such other relief as the Court deems just and proper.

13 DATED this 28th day of September, 2021.



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